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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

5 \* \* \*

6 Edward Bissau Mendy,

7 Plaintiff,

8 v.

9 Luis A. Tapia; and Layla McCarter,

10 Defendants.

Case No. 2:22-cv-00937-GMN-DJA

**Report and Recommendation**

11 This matter is before the Court on review of the docket. Plaintiff has been reminded on  
12 three occasions that he must file a certificate of interested parties pursuant to Local Rule 7.1-1.  
13 (ECF Nos. 10, 12, 13). Plaintiff has yet to file this certificate and has not taken action in this case  
14 since April of 2023. (ECF No. 6). In the most recent reminder, the Court gave Plaintiff until  
15 December 7, 2023, to file his certificate and informed him that “[f]ailure to comply with this  
16 order may result in a recommendation by the undersigned to the assigned district judge that this  
17 case be dismissed.” (ECF No. 13).

18 Additionally, Plaintiff has not filed a proof of service for Defendant Luis A. Tapia by the  
19 deadline of January 4, 2024. (ECF No. 7 at 8). And because the Court dismissed the claims  
20 against Layla McCarter without prejudice, and Plaintiff did not file an amended complaint, the  
21 only claims remaining are against Tapia. However, under Federal Rule of Civil Procedure 4(m),  
22 a court must dismiss an action without prejudice against a defendant who is not timely served.

23 **IT IS THEREFORE RECOMMENDED** that this case **be dismissed** without prejudice.  
24 The Clerk of Court is kindly directed to send this recommendation to Plaintiff.

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26 **NOTICE**

27 Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be  
28 in writing and filed with the Clerk of the Court within (14) days after service of this Notice. The

1 Supreme Court has held that the courts of appeal may determine that an appeal has been waived  
2 due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142  
3 (1985), *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that (1) failure to file  
4 objections within the specified time and (2) failure to properly address and brief the objectionable  
5 issues waives the right to appeal the District Court's order and/or appeal factual issues from the  
6 order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*  
7 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

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10 DATED: March 6, 2024

  
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12 DANIEL J. ALBREGTS  
13 UNITED STATES MAGISTRATE JUDGE  
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